

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 8
December 2012

LOUISIANA SB 604 ENACTED and EFFECTIVE June 7, 2012
(Act No. 675)

Nonmonetary Eligibility

Makes an exception for individuals bearing a relationship to a stockholder or principal officer of a corporation, partnership, or proprietorship, or one holding such title, to provide records/evidence of unemployment to be deemed unemployed by providing that the administrator shall not demand proof of the completed dissolution of the entire enterprise in order for the employee to be deemed unemployed. Any person bearing a relationship to the person in the positions or is the person in the position as listed above who has for the first 4 of the last 5 quarters been listed as an employee and for whom unemployment insurance coverage premiums have been paid for that same period of time and, who, in addition, is no longer eligible to receive any remuneration or dividends from the enterprise for whom he previously worked, shall be considered to have met the criteria for unemployment.

MASSACHUSETTS HB 4260 ENACTED and EFFECTIVE July 17, 2012

Administration

Provides for a compact between the Governor and the federally recognized sovereign Mashpee Wampanoag Tribe and establishes criteria for the operation of a tribal casino. The Tribe agrees that it will participate in the Commonwealth's statutory program for providing unemployment insurance benefits and unemployment compensation disability benefits with respect to employees of the Enterprise, including compliance with the provisions of the Commonwealth's Unemployment Insurance Law, Massachusetts General Laws Chapter 151A. The Tribe and the Enterprise consent to the jurisdiction of the Commonwealth agencies charged with the enforcement of such law and to the courts of the Commonwealth for purposes of enforcement of such law, provided that nothing herein shall be construed as a waiver by the Tribe or the Enterprise of the defense of sovereign immunity as to any claim for unemployment or disability benefits not covered by such unemployment or disability insurance.

MICHIGAN

HB 5437
(P.A. 428)

ENACTED and EFFECTIVE December 20, 2012

Administration

Provides that the information provided by the Unemployment Insurance Agency to the Bureau of State Lottery is subject to the confidentiality restrictions and penalties of the Michigan Employment Security Act.

Financing

Requires deductions from lottery prize winnings of \$1,000 or more for unemployment debts when unemployment insurance agency records show that the lottery winner has any current liability for restitution of unemployment insurance benefits, penalty, or interest.

MISSISSIPPI

SB 2604
(CH 515)

ENACTED May 1, 2012
EFFECTIVE July 1, 2012,
except as noted

Extensions and Special Programs

Establishes a Self-employment Assistance (SEA) program. Defines “self-employment assistance” activities to mean activities (including entrepreneurial training, business counseling, technical assistance, and any other requirements set forth by the executive director in regulation) approved by the executive director in which an individual, identified through an established system consistent with the system requirements of Federal law as likely to exhaust regular unemployment benefits, participates for the purpose of establishing a business and becoming self-employed. The SEA allowance is payable in lieu of and on the same schedule as regular benefits and from the unemployment fund to an SEA participant. Provides other provisions relating to the SEA program. The SEA provisions will apply to weeks beginning on or after July 7, 2012, or after approval by the U.S. Department of Labor, whichever date is later. The SEA program terminates as of the end of the week preceding the date when federal law no longer authorizes the SEA provisions, unless such date is a Saturday in which case the authority shall terminate as of such date.

Provides that notwithstanding any other provisions of state law, no otherwise eligible individual shall be denied benefits for any week in which they are engaged in the Self-employment Assistance program by reason of the application of State provisions relating to availability for work or relating to failure to apply for, or a refusal to accept, suitable work.

Financing

Provides that from and after January 1, 2012, accrual rules shall apply for purposes of computing contribution rates including associated functions. (Effective May 1, 2012.)

Provides that for any tax year when the reserve ratio on the preceding November 16, in the case of any tax year, equals or exceeds 3 percent, the modified rates shall be in effect. (Effective May 1, 2012.)

Nonmonetary Eligibility

Provides that under Federal law, the Department of Employment Security is allowed to conduct drug tests of applicants for unemployment compensation for the unlawful use of controlled substances as a condition for receiving such compensation, if such applicant: (i) was terminated from employment with his/her most recent employer because of unlawful use of controlled substances; or (ii) is an individual for whom suitable work is only available in an occupation that requires drug testing. Allows the denial of unemployment compensation based on the result of a drug test conducted by the Department. A positive drug test shall be deemed to be a failure to accept suitable work and subject to a disqualification that continues for the week in which such failure occurred and for not more than the 12 weeks which immediately follow such week. During the disqualification period, an acceptable proof of a negative test result from a Department approved testing facility may be submitted to end the disqualification period early. Authorizes the Department to institute a random drug testing program for all individuals who meet these drug testing requirements and to create regulations, policies, rules, guidelines, and procedures to implement such a program. Any drug testing term or provision that otherwise conflicts with Federal or State law shall be disregarded but shall not, in any way, affect the remaining provisions.

Allows any individual receiving benefits to participate in an approved training program to gain skills that may lead to employment while continuing to receive benefits. An unemployment recipient must be granted authorization to participate, and continuation of participation must be certified weekly by the participant recipient. While participating in the program, availability and work search requirements will be waived. Participation is limited to 12 weeks in any benefit year, and such participation shall not be considered employment for any purposes and shall not accrue benefits or wage credits. Participation in the training program shall meet the definition set forth in the U.S. Fair Labor Standards Act.

Overpayments

Provides that for any cases involving damages of overpaid unemployment benefits obtained and/or received through fraud, including fraud due to failure to report earnings while filing for unemployment benefits, a penalty of 20 percent of the overpayment amount shall be assessed. Of the 20 percent, $\frac{3}{4}$ shall be deposited into the State unemployment trust fund for use only for payment of unemployment benefits, and the remainder deposited into the Special Employment Security Administrative Fund. Interest on the overpayment balance shall accrue at one percent per month on the unpaid balance until repaid, which shall be deposited into the Special Employment Security Administrative Fund. All interest, penalties, and damages deposited into the Special Employment Security Administrative Fund shall be used for administration of the Department and may be expended for any programs for which the Department has administrative responsibility, subject to certain conditions.

Financing

Provides that any employer who is required to discharge an employee because the employee was placed on a disqualification registry maintained by the Department of Mental Health after the date of hire shall not be charged for unemployment insurance benefits based on wages paid to the employee for work prior to the date of discharge.

NEBRASKA

L 1058

ENACTED and EFFECTIVE April 10, 2012

Administration

Provides that an employer who received a notice of a claim determination because the claimant received wages from the employer on or after the first day of the claimant's base period for the most recent claim shall respond to the request by providing information within 10 days after the mailing or electronic transmission of a request. (Operative on October 1, 2012.)

Provides that if a contributory employer provided timely information that he/she continues to employ the part-time individual to the same extent as during the base period on the claim establishing the previous benefit year but did not receive a determination because of no involvement of base period wages and there are wages from that employer in the base period for the most recent claim, the employer shall be provided the opportunity to provide new information that such individual may be ineligible or disqualified on the current claim. This does not apply to employers who did not receive a determination because the separation was determined to result from a lack of work. (Operative on October 1, 2012.)

Provides that on or after October 1, 2012, if an employer fails to provide information within 10 days after the mailing or electronic transmission of a request, the employer shall forfeit any appeal rights otherwise available. (Operative on October 1, 2012.)

Changes the definition of "rehire" to mean the first day an employee begins employment with the employer following a termination of employment with such employer. Termination of employment does not include temporary separations from employment, such as unpaid medical leave, an unpaid leave of absence, a temporary layoff of less than 60 days in length, or an absence for disability or maternity. (Under prior law, a temporary layoff did not include one of less than 60 days in length.) (Operative on October 1, 2012.)

Appeals

Provides that an appeal that is not filed within the 20 days after mailing or delivery may be heard if good cause is shown for untimely filing. (Operative on October 1, 2012.)

Provides for an opportunity for a fair hearing before an impartial appeal tribunal on each appeal for the claimant or any other party entitled to notice of a determination. (Operative on October 1, 2012.)

Repeals provisions providing for appeal tribunals, its members, their qualifications, and their compensation. (Operative on October 1, 2012.)

Financing

Provides that if an employer is otherwise entitled to noncharging of benefits due to erroneous payments and other reasons specified in law and a decision allowing benefits is finally reversed, no employer's account shall be charged with benefits pursuant to the erroneous determination, and benefits shall not be paid for any subsequent week of unemployment involved in such reversal. (Operative on January 1, 2013.)

Provides that if a contributory employer responds to the request for information within 10 days after the mailing or electronic transmission of a request and provides accurate information as known to the employer at the time of the response, the employer's experience account shall not be charged if the individual's separation from employment is voluntary and without good cause. (Operative on January 1, 2013.)

Overpayments

Provides that any benefits received by any person to which, under a redetermination or decision the person is not entitled, shall be treated as erroneous payments. (Under prior law, such benefits were treated as excessive payments.) (Operative on January 1, 2013.)

Provides that if, after due notice, any employer defaults in any payment of combined taxes or payments in lieu of contribution or interest thereon, the amount due may be collected by setoff against the employer's Federal income tax refund. (Operative on January 1, 2013.)

Provides for the recovery of a covered unemployment compensation debt by setoff against a person's Federal income tax refund in accordance with the Treasury's offset program (TOP). The debtor shall be notified of plans for the recovery and shall be given 60 days to present evidence that all or part of the liability is either not legally enforceable or is not a debt. A determination shall be made that the debt is enforceable or is a debt before proceeding further with the offset. The amount recovered, less any administrative fees charged by the U.S. Treasury, shall be credited to the debt owed. Any determination rendered to not setoff does not require an amendment to the initial determination that formed the basis for the proposed setoff. (Under prior law, an offset provision would be implemented by rule and regulation.) (Operative on January 1, 2013.)

Provides that any person who has received any sum as benefits under the Employment Security Law to which not entitled shall be liable to repay such sum to the Commissioner of Labor for the fund. Any such erroneous benefit payments shall be collectible by setoff against the person's Federal income tax refund. (Operative on January 1, 2013.)

Provides that any person who has received any sum as benefits to which not entitled from any agency which administers an employment security law of another state or foreign government and is liable to repay such benefits may be required to repay to the Commissioner for such state

or foreign government the amount due. Such amount, without interest, may also be collected by setoff against the person's Federal income tax refund. (Operative on January 1, 2013.)

Provides that in addition to repaying an overpayment of benefits received due to willfully failing to disclose earnings or failing to disclose or falsifying facts which would result in disqualification or ineligibility for benefits, if an overpayment is established on or after October 1, 2013, an individual shall be required to pay a 15 percent penalty of the amount of benefits received as a result of fraud. All amounts collected shall be remitted to the State Treasurer for credit to the State Unemployment Compensation Fund. (Operative on October 1, 2013.)

Provides that an overpayment determination due to fraud is appealable. (Operative on October 1, 2013.)

Provides that if a person fails to repay an overpayment due to fraud and the assessed 15 percent penalty within 12 months after the date the overpayment determination becomes final, a levy on salary, wages, or other regular payments due to or received by such person may be issued and shall be continuous from the date the levy is served until the amount of the levy is satisfied. (Operative on October 1, 2013.)

NEW HAMPSHIRE

HB 1579
(CH 176)

ENACTED June 11, 2012
EFFECTIVE August 10, 2012

Administration

Requires an employing unit to include in its report of an individual's hire, rehire, or contract for services an individual's first day of work for purposes of the State Directory of New Hire.

Financing

Provides that any individual who willfully makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment for such individual or for any other person and received benefits for each week directly affected by the false statement or representation shall be deemed overpaid and shall make restitution in an amount equal to such overpayment plus a 20 percent penalty of the overpaid benefits. Payments of the 20 percent penalty made on or before October 20, 2013, shall be deposited into the State contingent fund. Payments of the 20 percent penalty made on or after October 20, 2013, shall be divided with $\frac{1}{4}$ of such payment being deposited into the contingent fund and $\frac{3}{4}$ (15 percent) into the State unemployment compensation fund.

OHIO

HB 337
(Session Law No. 71)

ENACTED and EFFECTIVE January 27, 2012

Extensions and Special Programs

Changes the ending date for the temporarily modified extended benefits program provisions concerning the EB "on" and "off" indicators using a 3-year look-back for the optional indicators

based on the seasonally adjusted total unemployment rate (TUR) for weeks of unemployment beginning after December 17, 2010, and ending on the close of the last day of the week ending 4 weeks prior to the last week for which 100 percent federal funding is available under Federal law. (Under prior law, the ending date was for weeks of unemployment ending on or before December 31, 2011.) (Applies retroactively as of December 31, 2011.)

WISCONSIN

AB 450
(Act No. 123)

ENACTED March 12, 2012
EFFECTIVE September 23, 2012,
or as noted

Extensions and Special Programs

Establishes a provision for unemployment insurance claimant training stipends--a sum sufficient to be used to pay stipends to participants in special occupational training from appropriated funds. (Applicable to weeks of unemployment beginning on September 23, 2012, and repealed July 1, 2013.)

A person participating in special occupational training is considered an employee of the employer that is providing that training. (Applicable to weeks of unemployment beginning on September 23, 2012, and repealed July 1, 2013.)

Provides that under the workers' compensation law, in the case of a person participating in special occupational training, the earnings of the injured person shall, for the purpose of calculating compensation, be taken to be the usual going earnings paid for similar services on a normal full-time basis in the same or similar employment in which earnings can be determined under methods set out in workers' compensation law. (Applicable to weeks of unemployment beginning on September 23, 2012, and effective July 1, 2013.)

Excludes from the definition of employee an individual who receives a stipend for participation in special occupational training. (Applicable to weeks of unemployment beginning on September 23, 2012, and repealed July 1, 2013.)

Excludes from the definition of wages a stipend received by an individual participating in special occupational training. (Applicable to weeks of unemployment beginning on September 23, 2012, and repealed July 1, 2013.)

Provides that a claimant has good cause to refuse an offer of suitable work if participating in special occupational training at the time the work was offered, and there is a reasonable expectation that the claimant will receive an offer of full-time work at the end of the training period. (Applicable to weeks of unemployment beginning on September 23, 2012, and repealed July 1, 2013.)

Requires the Department of Workforce Development to administer a pilot program to offer special occupational training for claimants who wish to participate in areas of the state served by three local workforce development boards. Special occupational training means training other than approved training that is offered directly by an employer to a claimant who is not employed

by the employer. The Department shall accept applications from employers to offer special occupational training to claimants and shall offer claimants the opportunity to receive placements to receive the training. Employers must affirm that they have one job opening for each participant. The Department may only place a claimant to receive special occupational training during a claimant's benefit year not to exceed 6 weeks. The claimant participates for not less than 20 nor more than 24 hours per week during a placement. Limits placements to 2 per benefit year, and there can be no placements after the end of the first 26 weeks of the claimant's benefit year. A participating claimant is not disqualified from receiving benefits solely on account of receiving the training. The obligation to be available for work during those hours in which the claimant participates in the training may be suspended, but availability must be maintained during other hours of the work week. Except having good cause to refuse an offer of suitable work and not having to be available for work under this training program, a claimant shall maintain eligibility for benefits during placement and shall terminate a placement if necessary to accept any work that the claimant is required to accept in order to maintain continuous eligibility for benefits. A \$75 per week stipend shall be paid to participating claimants, unless declined in writing. A participating claimant is considered an employee of the state for purposes of worker's compensation benefits. Upon successful completion of each placement, a training certificate shall be issued which shall describe the skills in which the claimant received training. (Applicable to weeks of unemployment beginning on September 23, 2012, and repealed July 1, 2013.)

Requires a report by May 30, 2013, evaluating the effectiveness of the program and providing recommendations concerning extension of or changes to the program that may enhance its effectiveness.

WISCONSIN

SB 417
(Act No. 236)

ENACTED April 6, 2012
EFFECTIVE April 22, 2012

Appeals

Requires the Department of Workforce Development to establish appeal tribunals to resolve liabilities for penalties imposed on fraudulent claims. (Applicable with respect to overpayments established after April 22, 2012, and with respect to weeks of unemployment beginning October 21 2012.)

Deletes the requirement that to be appointed to serve as a temporary reserve appeal tribunal, an individual must have formerly served as an appeal tribunal while employed by the Department and retired from State service as a permanent employee.

Provides that the appeal tribunal's decision of an appeal must be rendered consistent with applicable State and Federal law.

Financing

Requires the Department to issue determinations to resolve any liability for penalties imposed on fraudulent claims. (Applicable with respect to overpayments established after April 22, 2012, and with respect to weeks of unemployment beginning October 21, 2012.)

Requires the deposit of the money collected from the 15 percent penalty into the balancing account of the State's unemployment trust fund. (Applicable with respect to overpayments established after October 21, 2013.)

Provides if any employer, other than an employer which ceased business and has not paid or incurred a liability to pay wages in any quarter following the cessation of business, is delinquent in making, by the assigned due date, any payment required, the employer shall pay interest on the delinquent payment at that monthly rate that annualized is equal to 9 percent or to 2 percent more than the prime rate as published in the Wall Street Journal as of September 30 of the preceding year, whichever is greater, for each month or fraction thereof that the employer is delinquent from the date such payment became due. (Previously, the employer was required to pay interest at one percent per month or fraction thereof from the date the delinquent payment became due.) (Applicable with respect to accrual of interest for the fourth month beginning after April 22, 2012.)

Nonmonetary Eligibility

Provides that a claimant is not available for work in any week in which he or she is located in a country other than the United States or Canada for more than 48 hours unless the claimant has authorization to work in that other country and there is a reciprocal agreement concerning the payment of unemployment insurance benefits between that other country and the United States. (Applicable with respect to weeks of unemployment beginning on April 22, 2012.)

Overpayments

Defines the term "debt" to also mean a liability for the 15 percent penalty assessed on claimants for benefit payments erroneously paid as a result of acts of concealment of material facts and wages. (Applicable with respect to overpayments established after April 22, 2012, and with respect to weeks of unemployment beginning October 21, 2012.)

Provides that in addition to the penalty that a claimant forfeit benefits and be disqualified from receiving benefits due to acts of concealment, the Department shall assess a penalty against the claimant equal to 15 percent of the benefits payments erroneously paid to the claimant as a result of one or more acts of concealment of any material fact or wages. (Applicable with respect to overpayments established after April 22, 2012, and with respect to weeks of unemployment beginning October 21, 2012.)

Provides that to recover any of the 15 percent penalty assessed due to the claimant's concealment of material facts or wages, the Department may recoup the amount of the penalty by filing a warrant against a liable individual in the same manner as for collecting delinquent payments

from employers. (Applicable with respect to overpayments established after April 22, 2012, and with respect to weeks of unemployment beginning October 21, 2012.)

Provides that the fine for knowingly making a false statement or representation to obtain benefits, which cannot be less than \$100 nor more than \$500 or imprisonment not more than 90 days or both for each separate offence, is in addition to the 15 percent penalty assessed as a result of acts of concealment. (Applicable with respect to overpayments established after April 22, 2012, and with respect to weeks of unemployment beginning October 21, 2012.)